

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DERRIS L. STAPLETON, :
Plaintiff, : Civil Action No. 10-3144 (JLL)
: :
v. : ORDER
: :
JOHN DOE, C.O. #1, et al., :
Defendants. : :
:

For the reasons expressed in the Court's Opinion filed
herewith,

It is on this 2nd day of December, 2010,

ORDERED that, pursuant to 28 U.S.C. § 1915(a) and (b), the
application submitted by Plaintiff to proceed in forma pauperis
is hereby GRANTED; and it is further

ORDERED that the Clerk of the Court is directed to file the
Complaint without prepayment of the filing fee; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b), the Clerk
shall serve a copy of this Order by regular mail on the Attorney
General of the State of New York and on the Warden or
Administrator at the Arthur Kill Correctional Facility in Staten
Island, New York, where plaintiff currently is confined; and it
is further

ORDERED that plaintiff is assessed a filing fee of \$350.00
which shall be deducted from plaintiff's prison account pursuant

to 28 U.S.C. § 1915(b) (2) in the manner set forth below, regardless of the outcome of the litigation; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b) (2), until the \$350.00 fee is paid, each month that the amount in plaintiff's prison account exceeds \$10.00, the agency having custody of plaintiff shall assess, deduct from his account, and forward to the Clerk payments equal to 20% of the preceding month's income credited to plaintiff's prison account, with each payment referencing the civil docket number of this action; and it is further

ORDERED that the Complaint is DISMISSED WITHOUT PREJUDICE, in its entirety as against the named defendant, Dennis McNerney, pursuant to 28 U.S.C. §§ 1915(e) (2) (B) (ii) and 1915A(b) (1), for failure to state a claim upon which relief may be granted at this time; and it is further

ORDERED that plaintiff's Complaint alleging an Eighth or Fourteenth Amendment claim of excessive force, as against defendant, John Doe, C.O. #1, shall PROCEED at this time; and it is further

ORDERED that the Clerk of the Court shall issue summons, and the United States Marshal shall serve a copy of the Complaint, summons, and this Order upon the defendant, John Doe, C.O. #1 at the Bergen County Jail, pursuant to 28 U.S.C. § 1915(d), with all costs of service advanced by the United States; and it is further

ORDERED that the defendant, John Doe, C.O. #1, shall file and serve a responsive pleading within the time specified in Federal Rule of Civil Procedure 12, pursuant to 42 U.S.C. § 1997e(g)(2); and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(e)(1) and § 4(a) of Appendix H of the Local Civil Rules, the Clerk shall notify plaintiff of the opportunity to apply in writing to the assigned judge for the appointment of pro bono counsel in accordance with the factors set forth in Tabron v. Grace, 6 F.3d 454 (3d Cir. 1993), cert. denied, 510 U.S. 1196 (1994), which sets forth the requirements for eligibility for appointment of pro bono counsel (in this regard, plaintiff is advised that such appointment is not automatic); and it is further

ORDERED that the Clerk shall enclose with such notice a copy of Appendix H and a form Application for Appointment of Pro Bono Counsel; and it is finally

ORDERED that, if at any time plaintiff seeks the appointment of pro bono counsel, pursuant to Fed. R. Civ. P. 5(a) and (d), plaintiff shall (1) serve a copy of the Application for Appointment of Pro Bono Counsel by regular mail upon each party at his last known address or, if the party is represented in this

action by an attorney, upon the party's attorney at the attorney's address, and (2) file a Certificate of Service with plaintiff's Application for Pro Bono Counsel.



JOSE L. LINARES
United States District Judge